

Sports Lawyer John Tyrrell Shares his Secrets for Managing Risk in a Sports Facility Setting

John Tyrrell brings experience and passion to his craft as a sports lawyer. His clients know it, especially those in the sports facility industry. They have seen first-hand how his approach, especially with regard to the importance of properly training employees, has helped them avert litigation.

We asked John to visit with us and tell us a little about his approach and why it has been so successful. That interview follows.

Q: *Is there a risk of overloading employees with training from a risk management standpoint?*

A: If you load event personnel with too much information about risk, it can lead them to not being comfortable when it comes to doing their job as trained. If they think too much about it, it can inhibit inventiveness and problem solving. So the main thing is you want them trained to perform their roles. If the personnel are properly trained, the goals of risk management and management run pretty much parallel with each other, at least before an incident occurs.

Q: *Can you elaborate on this?*

A: What I always like to explain to my clients is that, when you talk about litigation, you can win or lose lawsuits. But the one lawsuit that you can never ever lose is the one that's never filed because you prevented the accident to begin with.

When you are dealing with management and risk management before an accident, the concerns really merge together. What you're talking about is training personnel to do their jobs.

This can be in-person training, with online refresher training or other types. You want to put them into a situation where, almost akin to muscle memory. They know what your standard operating procedures are. They know what your protocols are, and then they will react in accordance with those protocols when the circumstance arises.

There are two quotes that I often use when talking about training, and they are



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from two very different sources, one from Aristotle and one from Vince Lombardi.

The one from Aristotle is that, "Excellence is an art won by training and habituation."

The one from Vince Lombardi is that, "Perfection is not attainable. But if we chase perfection, we can catch excellence."

They both kind of mean the same thing, which is: If your upfront prophylactic training is good enough, then your people will react in accordance with your protocols when they're called upon to do so.

Q: *And what about after the accident occurs?*

A: After an accident occurs, there are two stages. Immediately after the accident, you still want them to instinctively and thoughtfully perform as trained. What I mean by that is they need to handle the emergency first. Whether it's calling for medical aid, whether it's calling for law enforcement aid, whether it's cordoning off an area, whether it's calling for mechanical stadium operations to fix a physical hazard, etc. — whatever it is they need to take care of that first.

Where risk management and management becomes more nuanced is when personnel are able afterward to record what has happened both in incident reports and

in statements or oral accounts of what occurred.

Where you can go sideways at that stage is if your personnel are more focused on giving you their opinion about what happened than telling you the facts of what they observed. People will do that. Now, you don't want to inhibit good advice from someone within their area of expertise, and all of these folks do have areas of expertise. They've been trained by you, so they are qualified and competent at a level that people off the street are not. And a lot of them have been doing this for years and years and years, so they have a level of expertise. So, you don't want to inhibit them from giving you any opinions at all. What you want to do is discourage them from giving opinions that have absolutely no value to you.

What I mean by that is, if they venture outside of their area of expertise to give you opinions on things like the structural componentry of a piece of material that's part of the stadium. Or the performance of independent contracted vendors, whether it be security or cleaning or something like that, that's outside of their bailiwick.

Opinions in that area are always a bad idea because there's no pro to them, there's only a con. The con is they can be difficult to explain if litigation occurs. There's no pro because they're valueless. They're being given by someone who doesn't have the foundation to give the opinion. So, what you really want to do is have them record as many facts as you can, and only give opinions if they're within their area of concentration.

Q: *How has the training of facilities personnel changed over the last decade, or has it?*

A: It's changed for sure. There are more mechanisms by which you can train people. I mean, online training is much more accessible. People can train from handheld devices. They can train from home. You

See Tyrrell Shares on Page 4

Tyrrell Shares Secrets for Managing Risk in Sports Facility Setting

Continued From Page 3

still may want to have the *esprit de corps* and camaraderie effect of getting people together, and the motivational aspect of getting people together and training them in that way.

But certainly, you can impart information in different technological ways. Training doesn't just take place just in the preseason. There are training updates that lead up to every individual event. Every individual event has different concerns, be it weather, be it your opponent and whether that brings a rivalry aspect to the event. Be it the game start time and whether darkness or daylight has an effect, things like that.

So, you're going to have training information provided continuously, right up to the point of the event. And if you want to impart event-specific, as opposed to protocol-general information, then you have all sorts of ways you can do that, through portals and emails and websites and text messages, that you just couldn't

do so earlier.

Q: *What is the attorney's role in this training aspect, and how has that changed, and how will it change?*

A: The role is to give everyone sort of an overview of how preventing accidents can end up actually preventing lawsuits. There aren't two separate goals. They aren't two separate things we strive for. Again, the best way to win litigation is to never have it. So, explaining that is one thing. Once we get into the litigation aspect, I think giving somebody an appreciation for how they may actually be impacted by a litigation process, as either a witness having to give a deposition, things like that. This will give them the idea of why it's important to record information while independent witnesses are still available to be found, while physical evidence can be retained, while photographs can be taken, etc.

Q: *When should a facility manager reach*

out to an attorney?

A: The attorney can provide value upfront, in the prophylactic stages, as opposed to just when something goes awry. Through my experience, I can provide risk management techniques by assessing whether something is an unreasonable risk, by assessing — based on my knowledge of what the industry does — how to address that risk and make it so that it is no longer unreasonable, and how to record our activities from start one to finish. Because if we ever do have to get into a courtroom, I'm going to have to demonstrate that we exercised reasonable care. And the best thing that I can do there is provide evidence of all of the things we do. So, cataloging those and putting them into an understandable presentation is really easier done if you think about it in real time, when it's happening, than if you try to reconstruct it two years later when the lawsuit comes. ●

Over 20 years experience advising clients concerning risks associated with the presentation of spectator events.



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